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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/648,508

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Frank T. Brzozowski

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EXAMINER

MAI, HUY KIM

ART UNIT

PAPER NUMBER

2873

MAIL DATE

DELIVERY MODE

02/13/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/648,508

Applicant(s)

BRZOZOWSKI, FRANK T.

Examiner

Huy K. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-38 and 46-87 is/are pending in the application.
4a) Of the above claim(s) 74-76 and 85 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 58-73 is/are allowed.
- 6) ☒ Claim(s) 35,36,38,46-56,77-84,86 and 87 is/are rejected.
- 7) ☒ Claim(s) 37 and 57 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. An examination of this application reveals that applicant/inventor is unfamiliar with patent prosecution procedure. The inventor is advised to (1) call USPTO Information Line and Patent Assistance Center (1-800/PTO-9199) (recommended) or (2) consult with a register patent attorney or the “former” attorney for how to change the power of attorney and change the mailing address.

2. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under “Attorney and Agent Roster.” Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450.

3. Based on the original oath/declaration filed Aug. 25, 2003, the attorney of record is Patricia A. Wenger and the mailing address is Ms. Wenger’s address. In order to change the power of attorney and change the correspondence address, either (1) the inventor may file a request for changing the power of attorney and mailing address or (2) the “former” attorney file a request to withdraw the power of attorney.

The inventor, pages 1 and 3 of the remarks filed Dec. 6, 2007, informed that “Patricia Wenger withdrew from prosecuting the action. Please forward all correspondence to Frank T. Brzozowski”. However, the record shows that the inventor takes no action on changing the power of attorney and changing the correspondence address.

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Currently, the attorney of record is Patricia Wenger; and the correspondence address is her address. All the Office actions and/or letters will be sent to Patricia Wenger's address unless the inventor files a request for changing the power of attorney and changing the correspondence address.

4. The inventor may call the examiner for any mailed actions or letters which will be faxed to the inventor upon request.

Response to Amendment

5. The amendment filed Dec. 6, 1007 including:

Claims 1-34 and 39-45 were cancelled by the applicant.

Claims 74-76 and 85 are withdrawn from the consideration because they directed to a non-elected invention. See paper #02/15/2006.

The remaining claims 35-38, 46-73, 77-84, 86 and 87 are pending in the instant application.

6. The amendment filed Dec. 6, 1007 is objected because claims 37, 57, 79-81, 86 and 87 have not been provided with a proper status identifier under 37 CFR 1.121©. The rule states "In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifier in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previous presented), (New), and (Not entered)".

The status identifier of claims 37 and 57 should be (Currently Amended). There is no such status identifier (Withdrawn –currently amended at 79).

The status identifier of claim 79 should be (Currently Amended). There is no such status identifier (Currently amended with 37, 57).

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The status identifier of claims 80, 81, 86 and 87 should be (Previously presented).

(NOTE: The pages (1,2,3,4,6,5,7) of the faxed amendment are not placed in ascending numerical order.)

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 79-84 and 87 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 79 has been amended into an independent claim renders claim indefinite because the phrases “said peripheral member” (line 2), “said peripheral edge” (line 5), “said lens” (line 5), and “said turning member” (lines 5-6) have no antecedent basis.

The remaining claims are dependent upon the above rejected base claim and thus inherit the deficiency thereof.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Since there is no amendment to claims 35, 36, 38, 46-56, 77, 78 and 86, the rejections to these claims are repeated the same as in the previous action.

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5. Claims 35 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Karasawa (5,663,779).

The limitations in claims 35 and 36 are shown in Karasawa's Figs. 4, 8, column 4, line 20 through column 6, line 11. Karasawa discloses an eyewear lens system, said system comprised of at least one rotator 52, wherein said rotator 52 is comprised of a turning member 52.

Regarding claim 36, Karasawa discloses said eyewear system further comprising a peripheral member 44 and a peripheral edge 60, said peripheral member 44 engaging said peripheral edge 60, said turning member 52 being attached to said peripheral member 44.

6. Claims 35 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Erhard (1,401,327).

Regarding claim 35, Erhard (Figs 1-4, page 1, column 1, line 38 through column 2, line 69) discloses eyeglasses comprising a lens 5-8 and a peripheral member 2 wherein friction between the user's finger and the edge of the lens causes the lens rotate relative to the peripheral member 2 and thus, Erhard's eyeglasses inherently included a rotator and/or a turning member.

Regarding claim 46, Erhard discloses an eyewear system comprising a containment structure 2, at least one lens 5-8 being rotatable within the containment structure 2 wherein the friction between the user's finger and the edge of the lens causes the lens rotate relative to the peripheral member 2 and thus, the Erhard's eyeglasses inherently include a rotator.

In response to the rejection, the applicant argues, in page 2, that "Applicant submits that Examiner's rejection of claim 35, as amended, is improper, and requests reconsideration. According to the Examiner's description of the turning member in Erhard, the turning member is the lens itself. However, claim 35 includes a "turning member", (emphasis added.) The word "member" is commonly described as "a distinct part of a whole"(see

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yourDictionary.com.) Accordingly, pursuant to the Examiner's description, the portion of the lens labeled by the Examiner as a "turning member" actually is not distinct part of the whole, and therefore it is a portion, not a member, of a lens system".

In reconsideration, the rejection to claim 35 over Erhart under 35 USC 102 is clear and proper. The peripheral member 2 wherein friction between the user's finger and the edge of the lens causes the lens rotate relative to the peripheral member 2 and thus, Erhard's eyeglasses inherently included a rotator and/or a turning member. Erhart discloses the inherency of "a rotator and/or a turning member". Erhart (page 1, lines 63-68) discloses "A person desiring to use the portion 5 ... would, by placing his finger in contact with the edge of the lens projecting beyond the inwardly set portion of the frame and rotating the lens" and claims (claim 1, lines 3-7) "a portion of the frame being set inwardly to define a pair of shoulders and to expose a portion of the periphery of the lens thereby to facilitate the rotation of the lens". It appears that the applicant is contradictory to himself in his arguments because his arguments are based on the dictionary "yourDictionary.com", but not based on what the applicant discloses in the original specification. The applicant discloses (page 24, lines 5-8) that "The rotator could be a turning member 90a, and it could also be "any means" (emphasized) for rotating a lens, including, but not limited to the pressure exerted by fingers grasping the lens" and (page 24, lines 13-16) that "The turning member 90a may be attached to the lens by "means known in the art" (emphasized) ..., but is not limited to, glue, "molding" (emphasized), ... and the like". Therefore, the applicant's turning member 90a is not "a distinct part of a whole" as argued; but could be any means for rotating a lens, including, but not limited to the pressure exerted by fingers grasping the lens and may be attached to the lens by molding as disclosed.

The applicant does not point out how the rotator and/or the turning member in claim 35 patentably distinct from the lens system in the Erhart reference.

In response to the rejection, the applicant also argues, in page 2, that “Regarding claim 46, Applicant submits that Examiner's rejection is improper, and requests reconsideration. Specifically, Erhard is for eyeglasses or spectacles, and claim 46, as amended, is for a group of headwear consisting of welder's eyewear, motorcycle rider eyewear, safety eyewear, skydiving eyewear, airplane pilot eyewear, gas mask eyewear, hazardous materials eyewear, 3-d glasses, costumes, masks, goggles, hoods, UV tanning eyewear, racecar driver eyewear, astronaut eyewear, sports eyewear, hoods and helmets.”

In reconsideration, the rejection to claim 46 over Erhart under 35 USC 102 is proper. It is true that the Erhart's configurable eyewear system is for eyeglasses or spectacles. The applicant's eyewear system does not exclude from a group including the eyeglasses and spectacle. In fact, the applicant (page 3, line 19 through page 4, line 6) discloses that “The lenses and eyewear of the invention can used in a headpiece. The terms headpiece and eyewear are intended to include “all kinds of eyewear” (emphasized) that can include lenses for the eyes. As such, the terms headpiece and eyewear is intended to include, but is not limited to eyeglasses, prescription eyeglasses”, ..., 3-d glasses, ..., UV tanning eyewear, ...and the like”. Thus, it is clear that claim 46 (as amended) is for a group of headwear including eyeglasses as disclosed in the original specification. Furthermore, if the applicant's eyewear system is for, for example, UV tanning eyewear, i.e., his eyewear system provides a function of UV tanning, the Erhart's eyewear system also provides a function of UV tanning because the same structure would provide the same function; otherwise, the applicant should demonstrate that his claimed invention in claim 46 provides the function of UV tanning, but the Erhart's eyewear system does not.

The applicant does not point out how the claimed invention in claim 46 is patentably distinct from the lens system in the Erhart reference.

7. Claim 38 is rejected under 35 U.S.C. 102(b) as being anticipated by Lin (4,998,815).

Lin (Figs. 1 and 2, column 2) discloses an eyewear lens 1, said lens 1 comprising an anchor cut-out 11, said cut-out 11 having an opening area (12,13) and an inner area, said inner area being wider than said opening area.

8. Claims 46, 47, 49, 50 and 86 are rejected under 35 U.S.C. 102(b) as being anticipated by Karasawa.

The limitations in claims 46, 47, 49 and 50 are shown in Karasawa's Figs. 5-10, column 5, line 45 through column 6, line 11. Karasawa discloses in Figs. 5-10, a configurable eyewear system, said eyewear system comprising at least one containment structure 11 and at least one lens 56, said at least one lens being rotatable within said containment structure 11, said eyewear system further comprising at least one rotator (102, 243), and said at least one lens 56 being rotatable at least by said rotator.

Regarding claim 86, Karasawa (Figs. 15-17, column 8, lines 48-68) discloses a configurable eyewear system, said eyewear system comprising sealing means, at least one containment structure 11 and at least one lens 56, said at least one lens being rotatable within said containment structure 11, said eyewear system further comprising at least one rotator (544), and said at least one lens 56 being rotatable at least by said rotator wherein said eyewear system is headwear can be used under water.

In response to the rejection, the applicant argues, in page 3, that "Applicant submits that Examiner's rejection is improper, and requests reconsideration. Karasawa is for polarized spectacles, and claim 46, as amended, is

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for a group of headwear consisting of welder's eyewear, motorcycle rider eyewear, ..., UV tanning eyewear, ... and helmets. In the amendment, sunglasses have been removed from the group of headwear".

In reconsideration of the applicant arguments to claim 46 over the Karasawa reference, the rejection to claims 46, 47, 49 and 50 over Karasawa under 35 USC 102 is proper. It is true that the Karasawa's configurable eyewear system is for polarized spectacles or sunglasses. The applicant's eyewear system does not exclude from a group including the sunglasses. In fact, the applicant (the specification, page 3, line 19 through page 4, line 6) discloses that "The terms headpiece and eyewear are intended to include "all kinds of eyewear" (emphasized) that can include lenses for the eyes. As such, the terms headpiece and eyewear is intended to include, but is not limited to ... sunglasses, ...UV tanning eyewear, ...and the like". Thus, it is clear that claim 46 (as amended) is for a group of headwear including sunglasses as disclosed in the original specification. Furthermore, if the applicant's eyewear system is for, for example, UV tanning eyewear, i.e., his eyewear system provides a function of UV tanning, the Karasawa's eyewear system also provides a function of UV tanning because the same structure would provide the same function; otherwise, the applicant should demonstrate that his claimed invention in claim 46 provides the function of UV tanning, but the Karasawa's eyewear system does not.

Removing the word "sunglasses" from the group of headwear does not make claim 46 patentable over the Karasawa reference. The applicant does not point out how the claimed invention in claim 46 is patentably distinct from the lens system in the Karasawa reference.

9. Claims 46, 47, 51-56, 77, and 78 are rejected under 35 U.S.C. 102(b) as being anticipated by Bailey (1,471,996).

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The limitations in claims 46, 47, 51-56, 77, and 78 are shown in Bailey's Figs. 1-7, pages 1-2. Bailey discloses a configurable eyewear system, said eyewear system comprising at least one containment structure 7 and at least one lens 1, said at least one lens being rotatable within said containment structure, said eyewear system further comprising one turning member 4, said at least one lens 1 being rotatable at least by said turning member 4, said system further comprising at least one peripheral member 3, said turning member 4 being attached to said peripheral member 3, and wherein said at least one lens further comprises a peripheral edge, said peripheral edge having at least one mating member, said at least one peripheral member 3 having at least one mating member, said peripheral member mating member engaging said peripheral edge mating member (see Fig. 6).

Regarding claim 51, the containment structure includes the bridge and/or guide 8, wherein the operating member 9 slides the turning member 4 between a first position (see Fig. 3) and a second position (see Fig. 4) and therefore, the guide 8 inherently includes stop members (see Fig.5).

Regarding claim 56, Bailey claims in claim 5 a pair of multifocal lenses.

In response to the rejection, the applicant argues, in page 4, that "Regarding claims 46, and 51-55, Applicant submits that Examiner's rejection is improper, and requests reconsideration. Bailey is for spectacles and nose glasses, and claims 46, and 51-55, as amended, are for a group of headwear consisting of welder's eyewear, motorcycle rider eyewear, safety eyewear, skydiving eyewear, airplane pilot eyewear, gas mask eyewear, hazardous materials eyewear, 3-d glasses, costumes, masks, goggles, hoods, UV tanning eyewear, racecar driver eyewear, astronaut eyewear, sports eyewear, hoods and helmets.", "Regarding claims 77, 78, 80 - 84, Applicant submits that Examiner's rejection is improper, and requests reconsideration. Bailey does not disclose a "peripheral edge having at least one mating member", a "peripheral member having at least one mating member" or the peripheral edge mating

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member "engaging" the peripheral member mating member. In Bailey the connecting member is attached to the lens with a screw.", and "In addition, regarding claims 51 and 80, in addition to the distinctions listed above, claims 51 and 80 include a "stop member", (emphasis added.) The word "member" is commonly described as "a distinct part of a whole"(see yourDictionary.com.) Accordingly, pursuant to the Examiner's description, the portion of the containment structure labeled by the Examiner as a "stop member" is not a distinct part of the containment structure, and therefore is actually a portion of the bridge and/or guide, not a distinct member of the containment structure".

In reconsideration of the applicant arguments to claim 46 over the Bailey reference, the rejection to claims 46, and 51-55 over Bailey under 35 USC 102 is proper. It is true that the bailey's configurable eyewear system is for spectacles. The applicant's eyewear system does not exclude from a group including the spectacles. In fact, the applicant (the specification, page 3, line 19 through page 4, line 6) discloses that "The terms headpiece and eyewear are intended to include "all kinds of eyewear" (emphasized) that can include lenses for the eyes. As such, the terms headpiece and eyewear is intended to include, but is not limited to ... sunglasses, ...UV tanning eyewear, ...and the like". Thus, it is clear that claim 46 (as amended) is for a group of headwear including sunglasses as disclosed in the original specification. Furthermore, if the applicant's eyewear system is for, for example, UV tanning eyewear, i.e., his eyewear system provides a function of UV tanning, the Bailey's eyewear system also provides a function of UV tanning because the same structure would provide the same function; otherwise, the applicant should demonstrate that his claimed invention in claim 46 provides the function of UV tanning, but the Bailey's eyewear system does not.

The rejection has point out and matched the elements in the reference with the elements in claims.

The applicant does not point out how the claimed invention in claims is patentably distinct from the lens system in the Bailey reference.

10. Claim 77 is rejected under 35 U.S.C. 102(b) as being anticipated by Archambault (2,813,459).

Archambault (Figs. 1-7, columns 1-2) discloses a configurable eyewear system, said eyewear system comprising at least one containment structure 7 and at least one lens 13, said at least one lens 13 being rotatable within said containment structure 7, said eyewear system further comprising one turning member 18, said at least one lens 13 being rotatable at least by said turning member 18, said system further comprising at least one peripheral member 12, said turning member 18 being attached to said peripheral member 12, and wherein said at least one lens (Fig. 7) further comprises a peripheral edge, said peripheral edge having at least one mating member, said at least one peripheral member 123 having at least one mating member, said peripheral member mating member engaging said peripheral edge mating member (see Fig. 7).

In response to the rejection, the applicant argues, in page 5, that “Regarding claims 77 and 80, Applicant submits that Examiner's rejection is improper, and requests reconsideration. Archambault does not disclose a "peripheral edge having at least one mating member", a "peripheral member having at least one mating member" or the peripheral edge mating member "engaging" the peripheral member mating member. In Archambault, the metal strip is attached to the lens with a pin”.

In reconsideration of the applicant arguments to claims 77 and 80 over the Archambault reference, the rejection to claims 77 and 80 over Archambault under 35 USC 102 is proper. The rejection has point out and matched the elements in the reference with the elements in claims.

The applicant does not point out how the claimed invention in claims is patentably distinct from the lens system in the Archambault reference.

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11. Claim 46 is rejected under 35 U.S.C. 102(b) as being anticipated by Tassier (5,956,114).

The limitations in claim 46 are readable over Tassier's Figs. 1,4,8. Tassier discloses an eyewear lens system comprising at least one lens 11 freely rotatable within the frame 2, any shake or touch and push on the surface of the lens cause the lens rotates. Thus surface of the lens can be considered a rotator.

In response to the rejection, the applicant argues, in pages 5-6, that "Regarding claim 46, Applicant submits that Examiner's rejection is improper, and requests reconsideration. Tassier is for spectacles, sunglasses and clip-ons and claim 46, as amended, is for a group of headwear consisting of welder's eyewear, motorcycle rider eyewear, safety eyewear, skydiving eyewear, airplane pilot eyewear, gas mask eyewear, hazardous materials eyewear, 3-d glasses, costumes, masks, goggles, hoods, UV tanning eyewear, racecar driver eyewear, astronaut eyewear, sports eyewear, hoods and helmets".

In reconsideration of the applicant arguments to claim 46 over the Tassier reference, the rejection to claim 46 over Tassier under 35 USC 102 is proper. It is true that the Tassier's configurable eyewear system is for spectacles. The applicant's eyewear system does not exclude from a group including the spectacles. In fact, the applicant (the specification, page 3, line 19 through page 4, line 6) discloses that "The terms headpiece and eyewear are intended to include "all kinds of eyewear" (emphasized) that can include lenses for the eyes. As such, the terms headpiece and eyewear is intended to include, but is not limited to ... sunglasses, ...UV tanning eyewear, ...and the like". Thus, it is clear that claim 46 (as amended) is for a group of headwear including sunglasses as disclosed in the original specification. Furthermore, if the applicant's eyewear system is for, for example, UV tanning eyewear, i.e., his eyewear system provides a function of UV tanning, the Tassier's eyewear system also provides a function of UV tanning because the same structure would provide the same function; otherwise, the applicant should

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demonstrate that his claimed invention in claim 46 provides the function of UV tanning, but the Tassier's eyewear system does not.

12. Claims 77 and 78 are rejected under 35 U.S.C. 102(b) as being anticipated by Hirano (JP 7-159733).

The limitations in claims 77 and 78 are shown in Hirano's Figs. 1-4. Hirano discloses a configurable eyewear system, said eyewear system comprising at least one containment structure (2, 3, 23) and at least one lens 26, said at least one lens 26 being rotatable within said containment structure, said eyewear system further comprising one turning member (11, 28), said at least one lens 26 being rotatable at least by said turning member, said system further comprising at least one peripheral member (23, 7, 8), said turning member 11 being attached to said peripheral member (see Fig. 4), and wherein said at least one lens further comprises a peripheral edge, said peripheral edge having at least one mating member, said at least one peripheral member having at least one mating member, said peripheral member mating member engaging said peripheral edge mating member.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Erhard.

Erhard discloses a configuration eyewear system comprising at least one containment structure 2 and at least one lens being rotatable with in the containment structure 2. wherein the

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containment structure having an interior surface and the lens having a peripheral edge (see Fig. 4). The interior surface and the peripheral edge have complement shapes. Although the interior surface and the peripheral edge in the Erhard's eyewear system does not teach the exact the shape of bezel as that claimed by applicant, the shape, size, dimension differences are considered obvious choices and are not patentable unless unexpected results are obtained from these changes. Therefore, it would have been obvious to a person having ordinary skill in this art to modify the Erhard reference by interior surface and the peripheral edge having the same shape as the applicant's. Such a modification would have no functional differences from the Erhard reference.

In response to the rejection, the applicant argues, in pages 6-7, on the same ground of the argument as discussed in claim 46. See the above discussion (paragraph # 5).

Allowable Subject Matter

15. Claims 58-73 are allowed.

16. Claims 37 and 57 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

17. Claim 79 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

18. The following claims 37, 57 and 79 are drafted by the examiner and considered to distinguish patentably over the art of record in this application, the drafted claims 37, 57 and 79 are presented to inventor for consideration:

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Claims:

37. (Currently amended) ~~The~~ An eyewear lens system of claim 35 comprising at least one rotator wherein said rotator comprised of a turning member; said eyewear system further comprising at least one memory member.

57. (Currently amended) ~~The~~ An configurable eyewear system of claim 46 comprising at least one containment structure and at least one lens, at least one lens rotatable within said containment structure, said eyewear system further comprising at least one rotator, said at least one lens being rotatable at least by said rotator; said eyewear system further comprising at least one memory member, wherein said eyewear system is in a group of headwear consisting of welder's eyewear, motorcycle rider eyewear, safety eyewear, skydiving eyewear, airplane pilot eyewear, gas mask eyewear, hazardous materials eyewear, 3-d glasses, costumes, masks, goggles, hoods, UV tanning eyewear, racecar driver eyewear, astronaut eyewear, sports eyewear, hoods and helmets.

79. (Currently amended) ~~The~~ An configurable eyewear system, said eyewear system comprising at least one containment structure and at least one lens, said at least one lens being rotatable within said containment structure, said eyewear system further comprising one turning member, said at least one lens being rotatable at least by said turning member, said system further comprising at least one peripheral member, said turning member being attached to said peripheral member, and wherein said at least one lens further comprises a peripheral edge, said peripheral edge having at least one mating

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member, said at least one peripheral member having at least one mating member, said peripheral mating member engaging said peripheral edge mating member, said eyewear system further comprising at least one memory member, wherein said peripheral member has a first end and a second end, said first end having a first projection member and said second end having a second projection member, said first and second projection members meeting when said peripheral member encircles said peripheral edge of said lens, and wherein said turning member is comprised of said first and second projection members.

Response to Arguments

19. The inventor, pages 5-6 (as stamped by fax machine) of remarks, states that:

*“Attorney Patricia Wenger is not any longer involved in the prosecuting and proceedings of this patent and she will not be the ongoing attorney of record.. All correspondence and inquiries are to be directed to the inventor Frank T. Brzozowski. This instruction was usurped and disregarded with Ms. Cooper's July 30, 2007 Notice being mailed to **the wrong address** (emphasized added). Do not mail any more correspondence and time sensitive documents to Patricia Wenger; mail all documents to Frank T. Brzozowski, 2357 East Dauphin Street, Philadelphia, PA 19125, 215-425-7672;*

Mr. Brzozowski, the small entity inventor, contends that he was wrongfully disrespected by the USPTO when he did not personally receive any mail, phone calls or e-mails relating to the problems in this action prior to yesterday. The documents dated July 30, 2007 were not mailed to the inventor who is now prosecuting this action. Mr. Brzozowski also complains that Ms. Cooper, who was not involved in the action until the response was faxed, subjected him to a surprise appearance that placed the patent rights in jeopardy”.

Firstly, it is believed that Ms. Cooper did the right job in reviewing the inventor's amendment and mailing the Notice of Non-Compliant Amendment to the attorney of record on Jul. 30, 2007. She cannot mail her Notice of Non-Compliant to an address other than the correspondence address of record. Secondly, the inventor incorrectly state the correspondence of record is “**a wrong address**”. The inventor, on the signed original declaration filed Aug. 25,

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2003, declared "that all statements (including the correspondence address) made herein of my knowledge are true and that all statements made on information and belief are believed to be true" and now states it is a wrong address. Thirdly, the inventor does not officially remove the power of attorney from record. Finally, all documents including the office actions and letters are still mailed to the correspondence address of record unless the inventor file a request for changing the power of attorney and changing the correspondence address.

(NOTE: the Office action will be notified to the inventor and will be faxed to him by examiner upon request.)

20. The inventor, page 6 (as stamped by fax machine) of remarks, states that:

"In the file wrapper for the Configurable eyewear invention, the July 30, 2007 Notice of Non-Compliant Amendment (37 CFR 1.121), Exhibit "A," consists of four (4) pages, but only two pages had pertinent information and instructions: page 3 was a blank Continuation Sheet (PTOL-324) (04-06) and page 4 was another blank Continuation Sheet (PTOL,-324). The Claims in the attachments are submitted to cure this procedural and administrative defect, and are not designed to be oppressive against the inventor and to deprive the constitutional rights of Article 8 Section 8 of the U.S. Constitution. Moreover, the Configurable eyewear patent has valid claims and the merits of the new and useful invention are patentable."

The pages 3 and 4 were blank continuation sheets of the Notice of Non-Compliant were generated by the computer for additional information of items 1C, 2B, 3C, 4E and 5. However there is no mark on these items. No additional information is provided on these pages.

21. The inventor, page 6 (as stamped by fax machine) of remarks, states that:

"On Friday November 30, 2007, the primary examiner Huy Mai and the inventor, discussed the status of the patent; Mr. Mai stated that the patent was abandoned. The inventor, Frank T. Brzozowski, contends that it is unconstitutional to deprive him of his rights, since the patent was very close to having a Notice of Allowance issued by having Claims 58-73 allowed and by combining the merits of Claims 37, 57 and 79 to become an independent claim. The inventor contends that Mr. Huy abused his discretion and has made errors of law in depriving the patent rights prior to his last office action dated March 21, 2007."

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It is noted that the inventor and the examiner discussed the status of the instant application, but not the patent.

Since the inventor's failure to timely file a proper reply to the Office action mailed Mar. 21, 2007, and since the applicant's failure to timely file a proper reply to notice of non-compliant amendment mailed Jul. 30, 2007, it is believed that the examiner, on Nov. 30, 2007, is correct in informing the inventor that his application should be abandoned.

Further the Mar 21, 2007 Office action summary states:

"A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). "

It is clear that the instant application become abandoned for the reasons, as discussed above.

Since the Dec.6, 2007 amendment has been entered, the examiner continues to examine the pending claims of the instant application.

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22. Inventor's arguments filed Dec. 6, 2007 have been fully considered but they are not persuasive. The inventor fails to point out the reasons why the independent claims 35, 38, 77 and 86 patentable over the prior art.

The inventor argues that "Basically, the inventor grieves that from the first filing the patent application has many new, novel and useful components that are unique, with concepts that teach the construction of a new product not previously invented. Due to Mr. Mai's abuse of discretion and failure to look at the overall new industrial eyewear products, the inventor had most of his rights oppressed and the various new and unique embodiments disregarded. Mr. Mai fails to cite any specific patent that consists of new and useful configurable eyewear that performs many commercial and industrial tasks that include the merits within claim 46, to wit: a group of headwear consisting of welder's eyewear, motorcycle rider eyewear, safety eyewear, skydiving eyewear, airplane pilot eyewear, deep sea diving eyewear, gas mask eyewear, hazardous materials eyewear, 3-d glasses, costumes, masks, goggles, hoods, UV tanning eyewear, racecar driver eyewear, astronaut eyewear, sports eyewear, hoods and helmets."

The response to the inventor's arguments has been repeatedly discussed in the Office action paragraph # 6, 8, 9 and 11 and the previous action as well.

Conclusion

23. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy Mai whose telephone number is (571) 272-2334. The examiner can normally be reached on M-F (8:00 a.m.-4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky L. Mack can be reached on (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1562.

/Huy Mai/
Huy Mai
Primary Examiner, Art Unit 2873

HKM/
February 13, 2008